

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

WENDELL L. PETTRY

Plaintiff,

v.

CIVIL ACTION NO. 2:10-cv-00804

WEST VIRGINIA, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

The plaintiff, an inmate at the Mount Olive Correctional Complex (“M.O.C.C.”), brings suit against the State of West Virginia under 28 U.S.C. § 1983 alleging that he was sent to prison with severe brain damage and was mistreated by the M.O.C.C staff. The complaint further alleges that the plaintiff was sentenced to lockup on false claims and denied access to the M.O.C.C. mental health unit. The plaintiff did not submit the \$350 filing fee or an Application to Proceed Without Prepayment of Fees and Costs. This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge proposes that this court dismiss the plaintiff’s complaint pursuant to 28 U.S.C. § 1915A .

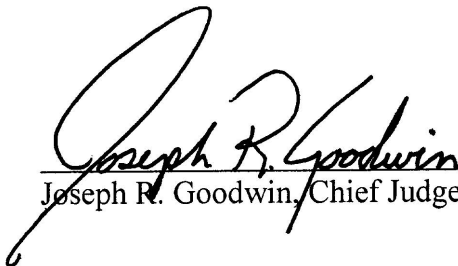
On September 17, 2010, Magistrate Judge Stanley recommended that this court dismiss the plaintiff’s claim for failure to state a claim on which relief can be granted and for seeking monetary relief from a defendant who is immune from such relief. On October 7, 2010, this court received

an undated letter from the plaintiff. This letter did not contain any specific objections to the Magistrate Judge Stanley's proposed findings of fact and recommendations.¹

The failure to object to a magistrate judge's report may be deemed a waiver of appeal of the substance of the report and the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199-200 (4th Cir. 1983); *Campbell v. United States D. Ct. N.D. Cal.*, 501 F.2d 196, 206 (9th Cir. 1974). The court has reviewed the Magistrate Judge's findings of fact and recommendation and finds no clear error on the face of the record. Therefore, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with her findings and recommendation. The court **DISMISSES** the plaintiff's Complaint [Docket 1].

The court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER: October 20, 2010



Joseph R. Goodwin, Chief Judge

¹ The plaintiff's letter also contained a request for "civil action forms." The Clerk of Court for the Southern District of West Virginia provided the plaintiff with the necessary forms to file a civil action under the Civil Rights Act and a Petition for a Writ of Habeas Corpus by a Person in State Custody. [Docket 5].